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BEFORE THE

**Federal Communications Commission**

**FEB 21 1992**

WASHINGTON, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In Re: Application of:

TRINITY BROADCASTING OF FLORIDA,  
INC.

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File No. BRCT-911001LY

For Renewal of License of

### EXECUTIVE SUMMARY

The license renewal application of Trinity Broadcasting of Florida, Inc. ("TBF") for WHFT-TV, Miami, Florida, has been contested by Glendale Broadcasting Company ("Glendale") and the Spanish American League Against Discrimination ("SALAD"). Both argue that the Trinity Broadcasting Network, which shares a controlling number of common directors with TBF, is an undisclosed real-party-in-interest, and exercises de facto control over National Minority TV, Inc. ("NMTV"), the licensee of KNMT-TV, Portland, Oregon. NMTV, and TBN, Petitioners allege have lacked candor or misrepresented facts in order for NMTV to qualify for the minority-ownership exception under Rule 73.3555(d).

These assertions, however, are unsupported by fact or law. Commission precedents makes it clear that there can be no undisclosed real-party-in-interest issue when the party has, in fact, been disclosed. The involvement of Dr. Crouch and the Trinity Network with NMTV has been abundantly disclosed on numerous occasions in Commission filings since 1987. These disclosures are dispositive of the issue. Brian L. O'Neill, 6 FCC Rcd. 2572, 2574 (1991).

Similarly, charges that Trinity Network and Dr. Crouch possessed de facto control over NMTV are equally unavailing. The charges overlook the two central facts that must inform any examination of the relationship between Trinity Network and NMTV. First, both of these organizations are non-membership, nonprofit, public charities in which no individual has an equity or other pecuniary interest. Secondly, Trinity Network and NMTV are bound together by common purposes--by their joint evangelical mission.

Even under a traditional "de facto control" analysis Petitioners fail to raise a substantial and material question of fact concerning whether TBN/Crouch have a vested right or power to control the corporation, particularly the station's finances, personnel decisions, or programming.

NMTV/Crouch did not mislead or deceive the Commission in failing to promptly report the felony conviction of Rev. Aguilar. The conviction was disclosed within 60 days after the application was filed. No motive to deceive can be imputed to the applicant, since the conviction was not disqualifying and Rev. Aguilar's criminal past is well-known and closely associated with his ministry.

The remaining assertions against the TBF renewal primarily involve claims that one of NMTV's minority directors, Rev. Philip Aguilar, an hispanic male, runs a "bizarre cult." Such allegations are not relevant to TBF's qualifications to remain a licensee and are not cognizable by the Commission absent the court adjudication. Trinity's fundraising practices comply with all applicable accounting standards and with existing IRS rules and regulations. NMTV/Trinity did not misrepresent who controls its funds, even though a nonofficer of NMTV signed two checks, because he did so in the mistaken belief that he was an officer of NMTV.

Finally, these challenges to TBF's renewal have failed to provide specific allegations of fact which raise substantial and material questions of fact that the grant of TBF's application is prima facie inconsistent with the public interest, convenience and necessity.

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TRINITY BROADCASTING OF FLORIDA, ) File No. BRCT-911001LY  
INC. )  
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For Renewal of License of )  
Commercial Television Station )  
WHFT-TV, Miami, Florida )

To: The Commission

**CONSOLIDATED OPPOSITION TO PETITIONS TO DENY**

Trinity Broadcasting of Florida, Inc. ("TBF"), licensee of WHFT, Miami, Florida, by its undersigned attorneys, and pursuant to section 73.3584 of the Commission's rules and regulations, 47 C.F.R. §73.3584 (1991), hereby submits this opposition to the petitions to deny filed by Glendale Broadcasting Company ("Glendale") on December 27, 1991 and by Spanish American League Against Discrimination ("SALAD") submitted on January 2, 1992 (collectively "Petitioners").<sup>1/</sup>


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<sup>1/</sup> Pursuant to section 73.3584 Trinity Broadcasting of Florida, Inc. was required to file its opposition to the petitions to deny on January 27, 1992 and February 3, 1992, respectively. TBF requested a one-week extension of time to file a consolidated opposition to the Glendale and SALAD petitions. On January 31, 1992, TBF requested a two-week extension of time. SALAD consented to the extension of time requested, and Glendale opposed. On February 18, 1992 TBF filed a further short extension of three days, until February 21, 1992. SALAD consented and Glendale was notified of the request.

I. BACKGROUND

1. Trinity Broadcasting.

TBF is a nonprofit, religious corporation. It is associated with Trinity Christian Center of Santa Ana, Inc., which operates under the name of Trinity Broadcasting Network ("Trinity Network"). TBF and Trinity Network are both nonmembership, nonstock corporations. Their Boards of Directors are controlled by the same group of individuals, and it is in that sense that they



programming produced by Trinity Network, but also includes religious programming produced by other ministries and other denominations, public affairs programming, human interest programming, health and exercise programming, and informational, educational and instructional programming. The Arbitron rating service ranks the Trinity Network service as the most viewed religious programming service in the United States.

Trinity Network has received countless commendations and recognitions for exceptional service to the public, including acknowledgements from presidents Reagan and Bush and Los Angeles Mayor Thomas Bradley. Trinity Network has received over 50 "Angel Awards" from Religion in Media ("RIM") for programming excellence, as well as several "Golden Halo" awards. In 1981 the National Religious Broadcasters Association awarded Trinity Network its "Broadcaster of the Year" award, followed, in 1986, by its "Foreign Broadcaster of the Year" award.<sup>3/</sup>

In addition to providing a religious programming service, Trinity Network's associated stations are all actively involved in the life of their communities of license. Each station maintains a 24-hour prayer telephone line, staffed by volunteer "prayer partners" who are good listeners and who are trained to direct troubled callers to local social service agencies and local churches. Each Trinity Network associated station also produces

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<sup>3/</sup> In the November 19, 1990 issue of The Chronicle of Philanthropy, Trinity Network was ranked as the 111th (out of 400) largest public charity in the United States. The article also noted that Trinity Network only expends 6% of its total income for fundraising.

local religious and public affairs programming and makes program time available to other local ministries. And, each associated station sponsors in its local community the His Hand Extended program, an outreach effort which solicits contributions of food and clothing within the community and distributes them to needy individuals and families.

2. Dr. Paul F. Crouch.

Trinity Network was founded in 1973 by Dr. Paul F. Crouch, an ordained minister who has been involved in the operation and management of broadcast stations since 1961. Dr. Crouch is a director and President of Trinity Network, and is also a director and President of each of the associated broadcast stations. Dr. Crouch and his wife Jan co-host the Network's signature program, The Praise the Lord Program.

3. National Minority TV.

In addition to carriage of its program service over associated facilities and cable television, Trinity Network has entered into program affiliation agreements with the licensees of approximately ten full-power television broadcast stations. National Minority TV, Inc. ("NMTV"), currently licensee of KNMT, Portland, Oregon, is one such Trinity Network programming affiliate. NMTV is a California Nonprofit Corporation organized on September 16, 1980, for religious and charitable purposes. It is a tax-exempt organization under the Internal Revenue Code and under California, Texas and Oregon law. From its incorporation in 1980 until November 1990, NMTV had the same three directors: Dr. Paul F. Crouch; Mrs. P. Jane Duff, an employee of Trinity Network; and



Rev. David Espinoza. Mrs. Duff is an African-American female, and Rev. Espinoza is an Hispanic male. In August 1990, Rev. Espinoza resigned from NMTV and was replaced by Rev. Philip Aguilar, also an Hispanic male. In early October 1991, a fourth director was added to NMTV's Board, Rev. E. V. Hill, an African-American male. A majority of NMTV's directors have always been members of minority groups.

3. Prior Related Proceedings.

In 1987, National Minority TV filed applications to acquire two unbuilt full-power television construction permits, one in Odessa, Texas and the other in Portland, Oregon. At that time,

director and President of NMTV were not attributable for purposes of the multiple ownership rule. 47 C.F.R. §73.3555(d).

In late 1990, NMTV, which had previously decided to dispose of its Odessa station (which it had constructed and put on the air) decided to acquire WTGI-TV in Wilmington, Delaware, an operating broadcast station which had been under the jurisdiction of the bankruptcy court since 1987. NMTV's transfer application for the Wilmington station was opposed by Dan Borowicz, the Chief Engineer of WTGI-TV. Borowicz complained about NMTV's plan to discontinue Spanish-language programming over the station. In a string of pleadings, he also charged that NMTV was a "sham" corporation because, inter alia, Dr. Crouch and Mrs. Duff worked for Trinity Network; Dr. Crouch served as a Director and President of both Trinity Network and NMTV; NMTV was a program affiliate of Trinity Network; NMTV borrowed funds from Trinity Network to acquire WTGI-TV;<sup>4/</sup> and Trinity Network and NMTV used the same engineer and attorneys.

While the Wilmington transfer application was pending the Commission, on September 13, 1991, through the Chief, Video Services Division, addressed a letter of inquiry to NMTV seeking further information based upon Borowicz's allegations that NMTV was

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<sup>4/</sup> In its March 29, 1991 application, NMTV certified its

"controlled by Trinity, Crouch, or both." NMTV responded in detail

with the 24-66 on September 24, 1991. Shortly thereafter

facto" control over NMTV; and (iii) that by misrepresenting or being less than candid about its relationship with NMTV, Trinity Network has shown itself to be unqualified to continue as a Commission licensee. These allegations are wholly without merit, and the facts relied upon by the Petitioners do not establish a

disclosed their relationship to NMTV from the outset. Petitioner Glendale's suggestion to the contrary does nothing more than provide a slim foundation for disingenuously confusing the standard applicable in resolving real party-in-interest issues with the one applicable to issues involving de facto control. Glendale Petition, p.7.

2. **Petitioners Have Not Alleged A Prima Facie Case of De Facto Control**

Petitioners' allegations that Trinity Network and Dr. Crouch possess de facto control over NMTV are equally unavailing. Petitioners overlook or have chosen to ignore the two central uncontroverted facts that must inform any examination of the relationship between Trinity Network and NMTV. First, both of these organizations are nonmembership, nonprofit corporations in which no individual has an equity or other pecuniary interest. Secondly, Trinity Network and NMTV are bound together, indeed not by controlling ties, but rather by their common evangelical mission.

As distinguished from a real party-in-interest inquiry, which is grounded solely on the issue of disclosure -- and Trinity Network and NMTV have made abundant disclosures regarding Dr. Crouch, Mrs. Duff and their positions with both charitable organizations -- de facto control is an inquiry into whether station control has been improperly passed to another organization. The prohibition against unauthorized transfer of control is grounded in specific provisions of the statute. As the Commission has stated, "[s]ection 310(b) of the Communications Act . . ." provides



volunteers, share office space and loan money to each other. The traditional analysis for de facto control, developed in the context of for-profit and stock enterprises, cannot be blindly applied to nonstock, tax-exempt charitable corporations such as NMTV, Trinity Network, or TBF.

Nonprofit corporations operate in a different legal environment than for-profit corporations, to which the standard "control" test has traditionally been applied. For example, nonprofit public charities operate on donations. Those donations may be of financial support, but they may also be of office space,

In addition, in any analysis of the relationships between two nonprofit organizations, one may not rationally set aside the fact that the organizations operate and are fundamentally united by their shared purposes. Trinity Network, NMTV and TBF are all public charities. All were organized by their principals because of shared, strongly held common religious beliefs, because of a common commitment to evangelism, and because of a common conviction that their message can best be spread through the use of a television ministry. Actions which might, in a for-profit corporation be indicative of "control," are in the culture of religious ministries simply evidence of a shared religious fervor. In this context, Trinity Network's extension of favorable loan terms to NMTV, for example, springs not from some motivation of control, but from a desire to further the common goal.<sup>7/</sup> Similarly, Trinity Network and NMTV's joint use of officers, equipment, even employees is unremarkable for nonprofit organizations, where shared goals often lead to joint ministries.

b) Even under the traditional "commercial" standard, Petitioners have not made a prima facie case that Trinity Network and Dr. Crouch "control" NMTV. The Commission has stated that the "de facto control" inquiry should focus on these questions: Who controls the licensee's financial affairs? Who directs the station's employees? Who determines the programming format?"

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<sup>7/</sup> Nonprofit groups routinely make contributions to other nonprofit groups. In fact, the IRS grants tax exemption to nonprofit organizations, formed only to raise money to give to other nonprofit groups. See, 26 U.S.C. § 509(a)(3)(A) (1991).



Stereo Broadcasters, Inc., 87 F.C.C.2d 87, 95, 49 Rad. Reg. 2d (P&F) 1263 (1981). The record in the Wilmington proceeding clearly established that, with respect to NMTV, the answer to each of these questions is NMTV, its officers, its directors, and its employees.

retains control over its programming -- the affiliation requires NMTV to broadcast only nine hours of Trinity Network programming per day, and the agreement may be cancelled with 120 days notice by either party (See Exhibit 3).<sup>10/</sup> NMTV also controls its own finances, i.e., generates its own revenue, solicits for its own contributions, files its own tax returns and manages its own bank accounts. Nothing in the Program Affiliation Agreement or the Secured Promissory Note between Trinity Network and NMTV compromises or impinges on NMTV's right to manage its stations or select the programming broadcast on the stations. Indeed, the Program Affiliation Agreement is terminable by both parties. The Secured Promissory Note's only "indicia" of control over NMTV is that it is advantageous to NMTV.

c) The Commission needs to clarify whether "ownership" in Section 73.3555(d) of the Rules means "51% ownership plus control" or simply "51% ownership." While Trinity Network and Dr. Crouch believe it is clear that there has been no de facto exercise of control in the relationship with NMTV, the Commission should take note that the minority ownership exception to the multiple ownership rules speaks specifically in terms of "ownership" and not "control." If the Commission wishes now to impose a "control" test

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<sup>10/</sup> Similarly, except for the favorable repayment terms, the

under Section 73.3555(d), it should do so in a prospective-only ruling.

In the wake of the WTGI, Wilmington assignment, NMTV was left with uncertainty regarding a possible change in the Commission staff's view of the application of the minority-ownership exception to the 12-station rule. Accordingly, on November 18, 1991, NMTV submitted a Request for Declaratory Ruling seeking guidance from the Commission on the issue.<sup>11/</sup> The gravamen of that request is that NMTV, a nonprofit charity, is, for FCC purposes, "owned" by its directors,<sup>12/</sup> a majority of whom are minorities, and when the Commission implemented the minority exception to the Rule of 12 it defined "minority control" as "minority ownership." Nothing more was required. This is a literal interpretation of the Rule, and on its face is not inconsistent with sound policy. The Commission, it appeared, had determined that, for purposes of the 12-station exception, it would focus on equity participation by minorities and not hinder or preclude group owners from providing significant expertise in the management of the minority owned property. If the Commission intended otherwise, it should make that clear in a prospective only ruling. An appropriate vehicle to clarify the exception in Section 73.3555(d) is provided by NMTV's Request for

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<sup>11/</sup> A copy of this filing is appended as Exhibit 1.

<sup>12/</sup> See, e.g., Roanoke Christian Broadcasting, Inc., 52 Rad. Reg. 2d (P&F) 1725, 1727 (Rev. Bd. 1983). See also FCC Form 346, instruction 3.c.: "Unincorporated associations and nonstock corporations with members. If a majority of the members are minorities, the entity is entitled to a preference."



the Opposition to Petition to Deny in the Wilmington proceeding. At that time, counsel first became aware of Rev. Aguilar's criminal conviction. Both in a footnote and in a biographical statement filed with the Opposition, NMTV noted that Rev. Aguilar had been

were consciously concealing facts from the Commission, it clearly would not have chosen to conceal a fact which is so widely known or so closely connected to Rev. Aguilar's public persona. Further, NMTV had no motive for deception, since the conviction, given its remoteness in time and the substantial evidence of Rev. Aguilar's rehabilitation, would not be disqualifying. See Alessandro Broadcast Co., 99 F.C.C.2d 1, 56 Rad. Reg. 2d (P&F) 1568 (Rev. Bd. 1984).

b) Trinity Network's fundraising practices are consistent with the law. SALAD charges that Trinity Network raised funds for the purchase of WTGI and then failed to return the donations when the sale was not consummated. While this charge is wholly unsupported, it also ignores applicable law. As shown in Exhibit 6, Trinity Network, to date, has taken no action with respect to funds donated for the WTGI purchase.<sup>14/</sup> It is now undergoing its yearly audit by its independent financial auditors, one of the purposes of which is properly to account for such "restricted revenues." When the audit is completed, consistent with its standard procedure, Trinity Network will contact donors of these restricted funds and request instructions on the disposition of the gifts. This practice complies with the standards of the American Institute of Certified Public Accountants (Statement of

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<sup>14/</sup> Dr. Crouch's and Mrs. Duff's affidavits included in Glendale Exhibits 10 and 14, noted that the funds raised by Trinity for the WTGI purchase would be used to offset a portion of NMTV's August 1991 debt to Trinity Network.

Position 78-10) and all applicable IRS regulations and is the course that Trinity Network regularly follows.

c) NMTV and Dr. Crouch did not show a lack of candor in

allegations.<sup>15</sup> See e.g. WPIX, Inc. 5 FCC Rcd. 7469, 68 Rad. Reg. 2d (P&F) 986 (1990); KRPL, Inc. 5 FCC Rcd. 2823, 67 Rad. Reg. 2d (P&F) 1172 (1990) (newspaper articles cannot support allegations in petition to deny); Mississippi Authority for Educational Television, 79 F.C.C.2d 577, 47 Rad. Reg. 2d (P&F) 1359, petition for partial reconsideration granted, 84 F.C.C.2d 349 (1981) (in the absence of sworn affidavits of personal knowledge contrary to specific instances of alleged violations, no presumption arises that alleged violation occurred).<sup>16/</sup>

Whether Set Free Church is a "bizarre cult group" is hardly relevant to TBF's qualifications. Rev. Aguilar is not a principal of TBF or Trinity Network. Neither is Dr. Crouch or any other principal of TBF a principal of Set Free. Character Qualifications In Broadcast Licensing, 102 F.C.C.2d 1179, 59 Rad. Reg. 2d (P&F) 801, 820 (1986) (non-FCC conduct not relevant for person whose position not cognizable under multiple ownership rules).

Finally, Set Free's alleged conduct is clearly not related to the FCC and has no connection with an FCC licensee. As such, absent an adjudication and/or criminal conviction, such

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<sup>15/</sup> One signed declaration was submitted by a mother upset about her relationship with her daughter. The daughter, Tracey Ravera, submitted a statement refuting the charges, and attributing them to her mother's bitterness over the rupture of their relationship.

<sup>16/</sup> In fact, a full reading of the relied upon article reveals that the City of Anaheim supports Set Free's work, and has made a number of buildings available to the church.



conduct is not cognizable by the Commission. See Character Qualifications in Broadcast Licensing, supra, 59 Rad. Reg 2d (P&F) at 819; Character Qualifications Policy, 5 FCC Rcd. 3252, 67 Rad. Reg. 2d (P&F) 1107, 1108 (1990).

e) Glendale's allegation that grant of WHFT's renewal would be inconsistent with the multiple ownership rules is erroneous. Contrary to Glendale's claims (Glendale Petition, p.3, issue 3), a grant of WHFT's renewal application, irrespective of the outcome any purported issue of "de facto" control over NMTV, will be consistent with the multiple ownership rules. Even under the Petitioners' theories, at present, Dr. Paul Crouch holds cognizable interests in only twelve commercial television stations.<sup>17/</sup>

f) Miscellaneous Allegations. Certain scattershot allegations are obviously false or based on mischaracterizations of

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- (1) Trinity Broadcasting of Arizona, Inc., KPAZ-TV, Phoenix, Arizona;
  - (2) Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network: KTCN-TV, Santa Ana, California; WDLI(TV), Canton, Ohio; and, WHSG(TV), Monroe, Georgia;
  - (3) Trinity Broadcasting of Oklahoma City, Inc., KTBO-TV, Oklahoma City, Oklahoma;
  - (4) Trinity Broadcasting of Washington, KTCW-TV, Tacoma, Washington;
  - (5) Trinity Broadcasting of Florida, Inc., WHFT(TV), Miami, Florida;
  - (6) Trinity Broadcasting of Indiana, Inc., WKOI(TV), Richmond, Indiana; and, WCLJ(TV), Bloomington, Indiana;
  - (7) Trinity Broadcasting of New York, Inc., WTCV-TV, Poughkeepsie, New York;
  - (8) Trinity Broadcasting of Texas, Inc., KDTX-TV, Dallas, Texas; and
  - (9) National Minority TV, Inc., KNMT-TV, Portland, Oregon.